

INTRODUCED BY

(Primary Sponsor)

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BY REQUEST OF THE SENATE JUDICIARY STANDING COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT STRENGTHENING THE REGISTRATION REQUIREMENTS AND OTHER PROVISIONS APPLICABLE TO SEXUAL OFFENDERS; AMENDING PROVISIONS GOVERNING YOUTH COURT, CRIMINAL PROSECUTION AND PENALTIES, DEFINITIONS, PROBATION AND PAROLE, REGISTRATION OF TRANSIENTS, AND DISSEMINATION OF INFORMATION ABOUT SEXUAL OFFENDERS; REQUIRING THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR A RESIDENTIAL SEXUAL OFFENDER TREATMENT PROGRAM; AMENDING SECTIONS 41-5-206, 41-5-216, 41-5-1513, 45-5-503, 45-5-625, 46-18-111, 46-18-201, 46-18-202, 46-18-203, 46-18-205, 46-18-231, 46-23-502, 46-23-504, 46-23-505, 46-23-506, 46-23-508, 46-23-509, 46-23-1011, AND 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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Section 1. Section 41-5-206, MCA, is amended to read:

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**"41-5-206. Filing in district court prior to formal proceedings in youth court.** (1) The county attorney

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may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

22

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

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(i) sexual intercourse without consent as defined in 45-5-503;

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(ii) deliberate homicide as defined in 45-5-102;

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(iii) mitigated deliberate homicide as defined in 45-5-103;

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(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

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(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

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(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and

1 the unlawful act is one or more of the following:

2 (i) negligent homicide as defined in 45-5-104;

3 (ii) arson as defined in 45-6-103;

4 (iii) aggravated assault as defined in 45-5-202;

5 (iv) sexual assault as provided in 45-5-502(3);

6 ~~(iv)~~(v) assault with a weapon as defined in 45-5-213;

7 ~~(v)~~(vi) robbery as defined in 45-5-401;

8 ~~(vi)~~(vii) burglary or aggravated burglary as defined in 45-6-204;

9 ~~(vii)~~(viii) aggravated kidnapping as defined in 45-5-303;

10 ~~(viii)~~(ix) possession of explosives as defined in 45-8-335;

11 ~~(ix)~~(x) criminal distribution of dangerous drugs as defined in 45-9-101;

12 ~~(x)~~(xi) criminal possession of dangerous drugs as defined in 45-9-102(4) through (6);

13 ~~(xi)~~(xii) criminal possession with intent to distribute as defined in 45-9-103(1);

14 ~~(xii)~~(xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

15 ~~(xiii)~~(xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal  
16 street gang membership; as defined in 45-8-403;

17 ~~(xiv)~~(xv) escape as defined in 45-7-306;

18 ~~(xv)~~(xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts  
19 enumerated in subsections (1)(b)(i) through ~~(1)(b)(xiv)~~ (1)(b)(xv).

20 (2) The county attorney shall file with the district court a petition for leave to file an information in district  
21 court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

22 (3) The district court shall grant leave to file the information if it appears from the affidavit or other  
23 evidence supplied by the county attorney that there is probable cause to believe that the youth has committed  
24 the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct  
25 a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is  
26 waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on  
27 request of either party for good cause. The district court may not transfer the case back to the youth court unless  
28 the district court finds, by a preponderance of the evidence, that:

29 (a) a youth court proceeding and disposition will serve the interests of community protection;

30 (b) the nature of the offense does not warrant prosecution in district court; and

(c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses."

**Section 2.** Section 41-5-216, MCA, is amended to read:

**"41-5-216. Disposition of youth court, law enforcement, and department records.** (1) Formal youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, ~~or reports referred to in 45-5-624(7), or the information referred to in 46-23-508, in any instance in which the youth was required to register, pursuant to Title 46, chapter 23, part 5, as a sexual offender.~~

(5) After formal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services and the department shall disassociate the offense and disposition information from the name of the youth in the respective management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may only be

1 inspected only pursuant to subsection (5).

2 (b) The informal youth court records may be maintained and inspected only by youth court personnel  
3 upon a new offense prior to the youth's 18th birthday.

4 (c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended  
5 supervision ends and the youth was ~~only~~ involved only in informal proceedings, informal youth court records that  
6 are in hard-copy form must be destroyed and any electronic records in the youth court management information  
7 system must disassociate the offense and disposition information from the name of the youth and may be used  
8 only for the following purposes:

9 (i) for research and program evaluation authorized by the office of the court administrator and subject  
10 to any applicable laws; and

11 (ii) as provided in Title 5, chapter 13.

12 (8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth  
13 court records within the juvenile probation management information system. Electronic records of the youth court  
14 may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy  
15 of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record  
16 that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or  
17 as provided in subsection (2) of this section.

18 (9) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth  
19 court records within the department's youth management information system. Electronic records of the  
20 department's youth management information system may not be shared except as provided in subsection (5).  
21 If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department  
22 shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy  
23 the record after it has fulfilled its purpose or as provided in subsection (2) of this section."  
24

25 **Section 3.** Section 41-5-1513, MCA, is amended to read:

26 **"41-5-1513. Disposition -- delinquent youth -- restrictions.** (1) If a youth is found to be a delinquent  
27 youth, the youth court may enter its judgment making one or more of the following dispositions:

28 (a) any one or more of the dispositions provided in 41-5-1512;

29 (b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for  
30 placement in a state youth correctional facility and recommend to the department that the youth not be released

1 until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to  
2 placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth  
3 in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

4 (i) the youth committed four or more misdemeanors in the prior 12 months;

5 (ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or  
6 a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional  
7 facility; and

8 (iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state  
9 youth correctional facility.

10 (c) require a youth found to be a delinquent youth, as the result of the commission of an offense that  
11 would be a sexual offense or violent offense, as defined in 46-23-502, if committed by an adult, to register and  
12 remain registered as a sexual or violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall  
13 retain jurisdiction in a disposition under this subsection to ensure registration compliance. The court:

14 (i) shall, prior to disposition, order a psychosexual evaluation that must comply with the provisions of  
15 46-18-111;

16 (ii) if the court requires the youth to register as a sexual offender, shall designate the youth's risk level  
17 pursuant to 46-23-509.

18 (d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender,  
19 the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of  
20 subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may  
21 order the department to notify the court within 5 working days before the proposed release of a youth from a youth  
22 correctional facility. Once a youth is committed to the department for placement in a state youth correctional  
23 facility, the department is responsible for determining an appropriate date of release or an alternative placement.

24 (e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if  
25 committed by an adult.

26 (2) If a youth has been adjudicated for a ~~sex~~ sexual offense, the youth court may require completion of  
27 ~~sex~~ sexual offender treatment before a youth is discharged.

28 (3) The court may not order a local government entity to pay for care, treatment, intervention, or  
29 placement. A court may order a local government entity to pay for evaluation and in-state transportation of a  
30 youth.

1 (4) The court may not order a state government entity to pay for care, treatment, intervention, placement,  
2 or evaluation that results in a deficit in the account established for that district under 41-5-130 without approval  
3 from the cost containment review panel."  
4

5 **Section 4.** Section 45-5-503, MCA, is amended to read:

6 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse  
7 without consent with another person commits the offense of sexual intercourse without consent. A person may  
8 not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iv).  
9

10 (2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or  
11 by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined  
12 not more than \$50,000, except as provided in 46-18-219, and 46-18-222, and subsections (3) and (4) of this  
13 section.

14 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or  
15 if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent,  
16 the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less  
17 than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219  
18 and 46-18-222.

19 (b) If two or more persons are convicted of sexual intercourse without consent with the same victim in  
20 an incident in which each offender was present at the location where another offender's offense occurred during  
21 a time period in which each offender could have reasonably known of the other's offense, each offender shall be  
22 punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more  
23 than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

24 (c) If the offender was previously convicted of an offense under this section or of an offense under the  
25 laws of another state or of the United States that if committed in this state would be an offense under this section  
26 and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the  
27 offender shall be:

28 (i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18  
29 years of age at the time of the commission of the offense; or

30 (ii) punished as provided in 46-18-219.

(d) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the

1 time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender shall  
2 be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to  
3 exceed \$50,000, or both.

4 (4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the  
5 time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of  
6 children, the offender:

7 (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not  
8 suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this  
9 subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender  
10 is not eligible for parole.

11 (ii) may be fined an amount not to exceed \$50,000; and

12 (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and  
13 behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

14 (b) If the offender is released after the mandatory minimum period of imprisonment, the offender is  
15 subject to supervision by the department of corrections for the remainder of the offender's life and shall participate  
16 in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

17 (c) For purposes of this subsection (4), "sexual predator of children" means a person who:

18 (i) committed the offense for which the person is being sentenced under subsection (4)(a) against a  
19 stranger;

20 (ii) established or furthered a relationship with the victim for the primary purpose of victimization;

21 (iii) committed any forcible felony, as defined in 45-2-101, in the course of committing sexual intercourse  
22 without consent for which the person is being sentenced under subsection (4)(a); or

23 (iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another  
24 person.

25 ~~(4)(5)~~ In addition to any sentence imposed under subsection (2) or (3), after determining the financial  
26 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the  
27 offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The  
28 amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

29 ~~(5)(6)~~ As used in ~~subsection~~ subsections (3) and (4), an act "in the course of committing sexual  
30 intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

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2       **Section 5.** Section 45-5-625, MCA, is amended to read:

3       **"45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if  
4 the person:

5       (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual  
6 conduct, actual or simulated;

7       (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or  
8 videotapes, or records a child engaging in sexual conduct, actual or simulated;

9       (c) knowingly, by any means of communication, including electronic communication as defined in  
10 45-8-213, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender  
11 believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

12       (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises  
13 any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in  
14 which a child is engaged in sexual conduct, actual or simulated;

15       (e) knowingly possesses any visual or print medium, including a medium by use of electronic  
16 communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

17       (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that  
18 the activity is of the nature described in those subsections; or

19       (g) possesses with intent to sell any visual or print medium, including a medium by use of electronic  
20 communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated.

21       (2) (a) Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of  
22 sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term  
23 not to exceed 100 years and may be fined not more than \$10,000.

24       (b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the  
25 offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison  
26 for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.

27       (c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for  
28 the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be  
29 imprisoned in the state prison for a term not to exceed 10 years, or both.

30       (3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is

processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a ~~sex~~ sexual offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense and the trier of fact finds beyond a reasonable doubt that the offender is a sexual predator of children, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(c) For purposes of this subsection (4), "sexual predator of children" means a person who:

(i) committed the offense for which the person is being sentenced under subsection (4)(a) against a stranger;

(ii) established or furthered a relationship with the victim for the primary purpose of victimization;

(iii) committed any forcible felony, as defined in 45-2-101, in the course of committing the offense for which the person is being sentenced under subsection (4)(a); or

(iv) compelled the victim to submit by force, as defined in 45-5-501(2), against the victim or another person."

**Section 6.** Section 46-18-111, MCA, is amended to read:

**"46-18-111. Presentence investigation -- when required.** (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505,

1 45-5-507, 45-5-625, or 45-5-627, or 46-23-507 if the offender was convicted of failure to register as a sexual  
2 offender pursuant to Title 46, chapter 23, part 5, the investigation must include a psychosexual evaluation of the  
3 defendant and a recommendation as to treatment of the defendant in the least restrictive environment,  
4 considering the risk the defendant presents to the community and the defendant's needs, unless the defendant  
5 was sentenced under 46-18-219. The evaluation must be completed by a sex offender therapist who is a member  
6 of the Montana sex offender treatment association or has comparable credentials acceptable to the department  
7 of labor and industry. The psychosexual evaluation must be made available to the county attorney's office, the  
8 defense attorney, the probation and parole officer, and the sentencing judge. All costs related to the evaluation  
9 must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related  
10 to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both,  
11 under Title 3, chapter 5, part 9.

12 (2) The court shall order a presentence report unless the court makes a finding that a report is  
13 unnecessary. Unless the court makes that finding, a defendant convicted of any offense not enumerated in  
14 subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written  
15 presentence investigation report by a probation and parole officer is presented to and considered by the district  
16 court. The district court may order a presentence investigation for a defendant convicted of a misdemeanor only  
17 if the defendant was convicted of a misdemeanor that the state originally charged as a sexual or violent offense  
18 as defined in 46-23-502.

19 (3) The defendant shall pay to the department of corrections a \$50 fee at the time that the report is  
20 completed, unless the court determines that the defendant is not able to pay the fee within a reasonable time.  
21 The fee may be retained by the department and used to finance contracts entered into under 53-1-203(4)."  
22

23 **Section 7.** Section 46-18-201, MCA, is amended to read:

24 **"46-18-201. Sentences that may be imposed.** (1) (a) Whenever a person has been found guilty of an  
25 offense upon a verdict of guilty or a plea of guilty or nolo contendere, a sentencing judge may defer imposition  
26 of sentence, except as otherwise specifically provided by statute, for a period:

- 27 (i) not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony; or  
28 (ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a  
29 financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless  
30 of whether any other conditions are imposed.

1 (b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the  
2 case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was  
3 imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

4 (2) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or  
5 nolo contendere, a sentencing judge may suspend execution of sentence, except as otherwise specifically  
6 provided by statute, for a period up to the maximum sentence allowed or for a period of 6 months, whichever is  
7 greater, for each particular offense.

8 (3) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or  
9 nolo contendere, a sentencing judge may impose a sentence that may include:

10 (a) a fine as provided by law for the offense;

11 (b) payment of costs, as provided in 46-18-232, or payment of costs of assigned counsel as provided  
12 in 46-8-113;

13 (c) a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a  
14 state prison to be designated by the department of corrections;

15 (d) commitment of:

16 (i) an offender not referred to in subsection (3)(d)(ii) to the department of corrections, with a  
17 recommendation for placement in an appropriate correctional facility or program; however, all but the first 5 years  
18 of the commitment to the department of corrections must be suspended, except as provided in 45-5-503(4) and  
19 45-5-625(4); or

20 (ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense  
21 enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in  
22 an appropriate correctional facility or program;

23 (e) with the approval of the facility or program, placement of the offender in a community corrections  
24 facility or program as provided in 53-30-321;

25 (f) with the approval of the prerelease center or prerelease program and confirmation by the department  
26 of corrections that space is available, placement of the offender in a prerelease center or prerelease program for  
27 a period not to exceed 1 year;

28 (g) chemical treatment of ~~sex~~ sexual offenders, as provided in 45-5-512, if applicable, that is paid for by  
29 and for a period of time determined by the department of corrections, but not exceeding the period of state  
30 supervision of the person; or

1 (h) any combination of subsections (2) through (3)(g).

2 (4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the  
3 sentencing judge may impose upon the offender any reasonable restrictions or conditions during the period of  
4 the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under  
5 subsection (1)(a) or (2) of this section may include but are not limited to:

6 (a) limited release during employment hours as provided in 46-18-701;

7 (b) incarceration in a detention center not exceeding 180 days;

8 (c) conditions for probation;

9 (d) payment of the costs of confinement;

10 (e) payment of a fine as provided in 46-18-231;

11 (f) payment of costs as provided in 46-18-232 and 46-18-233;

12 (g) payment of costs of assigned counsel as provided in 46-8-113;

13 (h) with the approval of the facility or program, an order that the offender be placed in a community  
14 corrections facility or program as provided in 53-30-321;

15 (i) with the approval of the prerelease center or prerelease program and confirmation by the department  
16 of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease  
17 program for a period not to exceed 1 year;

18 (j) community service;

19 (k) home arrest as provided in Title 46, chapter 18, part 10;

20 (l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

21 (m) with the approval of the department of corrections and with a signed statement from an offender that  
22 the offender's participation in the boot camp incarceration program is voluntary, an order that the offender  
23 complete the boot camp incarceration program established pursuant to 53-30-403;

24 (n) participation in a day reporting program provided for in 53-1-203;

25 (o) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the  
26 protection of the victim or society; or

27 (p) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(p).

28 (5) In addition to any other penalties imposed, if a person has been found guilty of an offense upon a  
29 verdict of guilty or a plea of guilty or nolo contendere and the sentencing judge finds that a victim, as defined in  
30 46-18-243, has sustained a pecuniary loss, the sentencing judge shall, as part of the sentence, require payment

1 of full restitution to the victim, as provided in 46-18-241 through 46-18-249, whether or not any part of the  
2 sentence is deferred or suspended.

3 (6) In addition to any of the penalties, restrictions, or conditions imposed pursuant to subsections (1)  
4 through (5), the sentencing judge may include the suspension of the license or driving privilege of the person to  
5 be imposed upon the failure to comply with any penalty, restriction, or condition of the sentence. A suspension  
6 of the license or driving privilege of the person must be accomplished as provided in 61-5-214 through 61-5-217.

7 (7) In imposing a sentence on an offender convicted of a sexual or violent offense, as defined in  
8 46-23-502, the sentencing judge may not waive the registration requirement provided in Title 46, chapter 23, part  
9 5.

10 (8) If a felony sentence includes probation, the department of corrections shall supervise the offender  
11 unless the court specifies otherwise."

12

13 **Section 8.** Section 46-18-202, MCA, is amended to read:

14 **"46-18-202. Additional restrictions on sentence.** (1) The sentencing judge may also impose any of  
15 the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers  
16 necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

17 (a) prohibition of the offender's holding public office;

18 (b) prohibition of the offender's owning or carrying a dangerous weapon;

19 (c) restrictions on the offender's freedom of association;

20 (d) restrictions on the offender's freedom of movement;

21 (e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title  
22 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;

23 (f) any other limitation reasonably related to the objectives of rehabilitation and the protection of the  
24 victim and society.

25 (2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term  
26 exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole  
27 and participation in the supervised release program while serving that term. If the restriction is to be imposed,  
28 the sentencing judge shall state the reasons for it in writing. If the sentencing judge finds that the restriction is  
29 necessary for the protection of society, the judge shall impose the restriction as part of the sentence and the  
30 judgment must contain a statement of the reasons for the restriction.

1 ~~(3) An offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-304~~  
2 ~~through 45-5-303, and sentenced to imprisonment in a state prison shall enroll in and complete the educational~~  
3 ~~phase of the prison's sexual offender program."~~  
4

5 **Section 9.** Section 46-18-203, MCA, is amended to read:

6 **"46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for  
7 revocation showing probable cause that the offender has violated any condition of a sentence, ~~or any condition~~  
8 ~~of a deferred imposition of sentence, or any condition of supervision after release from imprisonment imposed~~  
9 pursuant to 45-5-503(4) or 45-5-625(4), the judge may issue an order for a hearing on revocation. The order must  
10 require the offender to appear at a specified time and place for the hearing and be served by delivering a copy  
11 of the petition and order to the offender personally. The judge may also issue an arrest warrant directing any  
12 peace officer or a probation and parole officer to arrest the offender and bring the offender before the court.

13 (2) The petition for a revocation must be filed with the sentencing court during the period of suspension  
14 or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court  
15 of its jurisdiction to rule on the petition.

16 (3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested  
17 pursuant to this section.

18 (4) Without unnecessary delay, the offender must be brought before the judge, and the offender must  
19 be advised of:

- 20 (a) the allegations of the petition;  
21 (b) the opportunity to appear and to present evidence in the offender's own behalf;  
22 (c) the opportunity to question adverse witnesses; and  
23 (d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part

24 1.

25 (5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or  
26 conditions of the sentence can be modified, unless:

- 27 (a) the offender admits the allegations and waives the right to a hearing; or  
28 (b) the relief to be granted is favorable to the offender and the prosecutor, after having been given notice  
29 of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of  
30 probation is not favorable to the offender for the purposes of this subsection (5)(b).

1 (6) (a) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has  
2 been a violation of:

3 (i) the terms and conditions of the suspended or deferred sentence; or  
4 (ii) a condition of supervision after release from imprisonment imposed pursuant to 45-5-503(4) or  
5 45-5-625(4).

6 (b) However, when a failure to pay restitution is the basis for the petition, the offender may excuse the  
7 violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the  
8 offender's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

9 (7) (a) If the judge finds that the offender has violated the terms and conditions of the suspended or  
10 deferred sentence, the judge may:

11 (i) continue the suspended or deferred sentence without a change in conditions;  
12 (ii) continue the suspended sentence with modified or additional terms and conditions;  
13 (iii) revoke the suspension of sentence and require the offender to serve either the sentence imposed  
14 or any sentence that could have been imposed that does not include a longer imprisonment or commitment term  
15 than the original sentence; or

16 (iv) if the sentence was deferred, impose any sentence that might have been originally imposed.

17 (b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either  
18 expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit.  
19 The judge shall state the reasons for the judge's determination in the order. Credit must be allowed for time  
20 served in a detention center or home arrest time already served.

21 (c) If a judge finds that an offender has not violated a term or condition of a suspended or deferred  
22 sentence, that judge is not prevented from setting, modifying, or adding conditions of probation as provided in  
23 46-23-1011.

24 (8) If the judge finds that the prosecution has not proved, by a preponderance of the evidence, that there  
25 has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be  
26 dismissed and the offender, if in custody, must be immediately released.

27 (9) The provisions of this section apply to any offender whose suspended or deferred sentence is subject  
28 to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the  
29 offender's original sentence."  
30

1           **Section 10.** Section 46-18-205, MCA, is amended to read:

2           **"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension.** (1) If the  
3 victim was less than 16 years ~~old~~ of age, the imposition or execution of the first 30 days of a sentence of  
4 imprisonment imposed under the following sections may not be deferred or suspended and the provisions of  
5 46-18-222 do not apply to the first 30 days of the imprisonment:

6           (a) 45-5-503, sexual intercourse without consent;

7           (b) 45-5-504, indecent exposure;

8           (c) 45-5-505, deviate sexual conduct; or

9           (d) 45-5-507, incest.

10          (2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a  
11 sentence of imprisonment imposed under the following sections may not be deferred or suspended:

12          (a) 45-5-103(4), mitigated deliberate homicide;

13          (b) 45-5-202, aggravated assault;

14          (c) 45-5-302(2), kidnapping;

15          (d) 45-5-303(2), aggravated kidnapping;

16          (e) 45-5-401(2), robbery;

17          (f) 45-5-502(3), sexual assault;

18          (g) 45-5-503(2) and (3), sexual intercourse without consent;

19          (h) 45-5-603, aggravated promotion of prostitution;

20          (i) 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;

21          (j) 45-9-102(4), criminal possession of dangerous drugs; and

22          (k) 45-9-103(2), criminal possession with intent to distribute dangerous drugs.

23          (3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of  
24 imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

25          (4) The provisions of this section do not apply to sentences imposed pursuant to 45-5-503(4) or  
26 45-5-625(4).

27  
28           **Section 11.** Section 46-18-231, MCA, is amended to read:

29           **"46-18-231. Fines in felony and misdemeanor cases.** (1)(a) Except as provided in subsection (1)(b),  
30 whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an

1 offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in  
2 addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

3 (b) For those crimes for which penalties are provided in the following sections, a fine may be imposed  
4 in accordance with subsection (3) in addition to a sentence of imprisonment:

5 (i) 45-5-103(4), mitigated deliberate homicide;

6 (ii) 45-5-202, aggravated assault;

7 (iii) 45-5-213, assault with a weapon;

8 (iv) 45-5-302(2), kidnapping;

9 (v) 45-5-303(2), aggravated kidnapping;

10 (vi) 45-5-401(2), robbery;

11 (vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more  
12 years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;

13 (viii) 45-5-503(2) ~~and (3)~~ through (4), sexual intercourse without consent, and 45-5-625(4), sexual abuse  
14 of children by a sexual predator of children;

15 (ix) 45-9-101(2), (3), and (5)(d), criminal possession with intent to distribute a narcotic drug, criminal  
16 possession with intent to distribute a dangerous drug included in Schedule I or Schedule II, or other criminal  
17 possession with intent to distribute a dangerous drug;

18 (x) 45-9-102(4), criminal possession of an opiate;

19 (xi) 45-9-103(2), criminal possession of an opiate with an intent to distribute; and

20 (xii) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.

21 (2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found  
22 guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may  
23 impose a fine only in accordance with subsection (3).

24 (3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able  
25 to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into account  
26 the nature of the crime committed, the financial resources of the offender, and the nature of the burden that  
27 payment of the fine will impose.

28 (4) Any fine levied under this section in a felony case shall be in an amount fixed by the sentencing judge  
29 not to exceed \$50,000."

1       **Section 12.** Section 46-23-502, MCA, is amended to read:

2       **"46-23-502. Definitions.** As used in 46-18-255 and this part, the following definitions apply:

3       (1) "Department" means the department of corrections provided for in 2-15-2301.

4       (2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional,  
5 or volitional capacity of a person in a manner that predisposes the person to the commission of one or more  
6 sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

7       (3) "Municipality" means an entity that has incorporated as a city or town.

8       ~~(3)~~(4) "Personality disorder" means a personality disorder as defined in the fourth edition of the  
9 Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

10       ~~(4)~~(5) "Predatory sexual offense" means a sexual offense committed against a stranger or against a  
11 person with whom a relationship has been established or furthered for the primary purpose of victimization.

12       (6) "Registration agency" means:

13       (a) if the offender resides in a municipality, the police department of that municipality; or

14       (b) if the offender resides in a place other than a municipality, the sheriff's office of the county in which  
15 the offender resides.

16       (7) (a) "Residence" means the location at which a person regularly resides, regardless of the number  
17 of days or nights spent at that location, that can be located by a street address, including a house, apartment  
18 building, motel, hotel, or recreational or other vehicle.

19       (b) The term does not mean a homeless shelter.

20       ~~(5)~~(8) "Sexual offender evaluator" means a person qualified under rules established by the department  
21 to conduct sexual offender and sexually violent predator evaluations.

22       ~~(6)~~(9) "Sexual offense" means:

23       (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-301 (if the victim  
24 is less than 18 years of age and the offender is not a parent of the victim), 45-5-302 (if the victim is less than 18  
25 years of age and the offender is not a parent of the victim), 45-5-303 (if the victim is less than 18 years of age and  
26 the offender is not a parent of the victim), 45-5-502(3), 45-5-503, 45-5-504(1) (if the victim is under 18 years of  
27 age and the offender is 18 years of age or older), 45-5-504(2)(c), 45-5-507 (if the victim is under 18 years of age  
28 and the offender is 3 or more years older than the victim), 45-5-603(1)(b), or 45-5-625; or

29       (b) any violation of a law of another state, a tribal government, or the federal government that is  
30 reasonably equivalent to a violation listed in subsection ~~(6)~~(a) (9)(a) or for which the offender was required to

1 register as a ~~sex~~ sexual offender after conviction.

2 ~~(7)(10)~~ "Sexual or violent offender" means a person who has been convicted of a sexual or violent  
3 offense.

4 ~~(8)(11)~~ "Sexually violent predator" means a person who:

5 (a) has been convicted of a sexual offense and who suffers from a mental abnormality or a personality  
6 disorder that makes the person likely to engage in predatory sexual offenses; or

7 (b) has been convicted of a sexual offense against a victim 12 years of age or younger and the offender  
8 is 18 years of age or older.

9 (12) "Transient" means an offender who has no residence.

10 ~~(9)(13)~~ "Violent offense" means:

11 (a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103,  
12 45-5-202, 45-5-206 (third or subsequent offense), 45-5-210(1)(b), (1)(c), or (1)(d), 45-5-212, 45-5-213, 45-5-302  
13 (if the victim is not a minor), 45-5-303 (if the victim is not a minor), 45-5-401, 45-6-103, or 45-9-132; or

14 (b) any violation of a law of another state, a tribal government, or the federal government reasonably  
15 equivalent to a violation listed in subsection ~~(9)(a)~~ (13)(a).

16  
17 **Section 13.** Section 46-23-504, MCA, is amended to read:

18 **"46-23-504. Persons required to register -- procedure.** (1) ~~A~~ Except as provided in 41-5-1513, a  
19 sexual or violent offender:

20 (a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced  
21 to confinement or is not sentenced to the department and placed in confinement by the department;

22 (b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if  
23 sentenced to confinement or sentenced to the department and placed in confinement by the department;

24 (c) shall register within ~~40~~ 3 business days of entering a county of this state for the purpose of residing  
25 or setting up a temporary ~~domicile~~ residence for 10 days or more or for an aggregate period exceeding 30 days  
26 in a calendar year; and

27 (d) who is a transient shall register within 3 business days of entering a county of this state.

28 (2) Registration under subsection (1)(a), or (1)(c), or (1)(d) must be with the ~~chief of police of the~~  
29 ~~municipality or the sheriff of the county if the offender resides in an area other than a municipality. Whichever law~~  
30 ~~enforcement official the offender registers with~~ appropriate registration agency. If an offender registers with a

1 police department, the department shall notify the ~~other official~~ sheriff's office of the county in which the  
2 municipality is located of the registration. The probation officer having supervision over an offender required to  
3 register under subsection (1)(a) shall verify the offender's registration status with the appropriate ~~law enforcement~~  
4 registration agency.

5 (3) At the time of registering, the offender shall sign a statement in writing giving the information required  
6 by subsections (3)(a) through (3)(g) and any other information required by the department of justice. The ~~chief~~  
7 of police or sheriff registration agency shall fingerprint the offender, unless the offender's fingerprints are on file  
8 with the department of justice, and shall photograph the offender. Within 3 days, the ~~chief of police or sheriff~~  
9 registration agency shall send copies of the statement, fingerprints, and photographs to the department of justice.

10 The information collected from the offender at the time of registration must include the:

11 (a) name of the offender and any aliases used by the offender;

12 (b) offender's social security number;

13 (c) residence information required by subsection (4);

14 (d) name and address of any business or other place where the offender is or will be an employee;

15 (e) name and address of any school where the offender will be a student;

16 (f) offender's driver's license number; and

17 (g) description and license number of any motor vehicle owned or operated by the offender.

18 (4) (a) If, at the time of registration, the offender regularly resides in more than one county or  
19 municipality, the offender shall register with the registration agency of each county or municipality in which the  
20 offender resides. If an offender resides in more than one location within the same county or municipality, the  
21 registration agency may require the offender to provide all of the locations where the offender regularly resides  
22 and to designate one of them as the offender's primary residence.

23 (b) Registration of more than one residence pursuant to this section is an exception from the single  
24 residence rule provided in 1-1-215.

25 (5) A transient shall report monthly, in person, to the registration agency with which the transient  
26 registered pursuant to subsection (1)(d). The transient shall report on a day specified by the registration agency  
27 and during the normal business hours of that agency. On that day, the transient shall provide the registration  
28 agency with the information listed in subsections (3)(a) through (3)(g). The registration agency to which the  
29 transient reports may also require the transient to provide the locations where the transient stayed during the  
30 previous 30 days and may stay during the next 30 days.

(4)(6) (a) The department of justice shall mail a registration verification form:

(i) each 90 days to an offender designated as a level 3 offender under 46-23-509; and

(ii) each 180 days to an offender designated as a level 2 offender under 46-23-509; and

(ii)(iii) each year to a violent offender or an offender designated as a level 1 ~~or level 2~~ offender under 46-23-509.

(b) If the offender is a transient, the department of justice shall mail the offender's registration verification form to the registration agency with which the offender last registered.

(b)(c) The form must require the offender's ~~current address and~~ notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the ~~department~~ registration agency where the offender last registered or, if the offender was initially registered pursuant to subsection (1)(b), to the registration agency in the county or municipality in which the offender is located. A sexual offender shall return the form to the appropriate registration agency in person, and at the time that the sexual offender returns the registration verification form, the registration agency shall take a photograph of the offender.

(7) Within 3 days after receipt of a registration verification form, the registration agency shall provide a copy of the form and most recent photograph to the department of justice.

(5)(8) The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.

(6)(9) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 10 days after entry of the judgment."

**Section 14.** Section 46-23-505, MCA, is amended to read:

**"46-23-505. Notice of change of ~~address name or residence or student, employment, or transient status~~ -- duty to inform -- forwarding of information.** (1) If an offender required to register under this part has a change of ~~address name or residence or a change in student, employment, or transient status~~, the offender shall within ~~40~~ 3 business days of the change ~~give written~~ appear in person and give notification of the ~~new address change~~ to the registration agency with whom the offender last registered or, if the offender was initially registered under 46-23-504(1)(b), to the ~~department and to the chief of police of the municipality or sheriff of the county~~ registration agency for the county or municipality from which the offender is moving. ~~The agency or~~

1 ~~department shall, within 3 days after receipt of the new address, forward it to the department of justice, which~~  
2 ~~shall forward a copy of the new address and photograph to the sheriff having jurisdiction over the new address~~  
3 ~~and to the chief of police of the municipality of the new address if the new address is in a municipality.~~

4 (2) If an offender required to register under this part is a transient, the offender shall provide written  
5 notification to the registration agency with which the offender last registered or, if the offender initially registered  
6 pursuant to 46-23-504(1)(b), shall provide notice within 3 business days to the registration agency in the county  
7 or municipality in which the offender resides.

8 (3) Within 3 business days after receipt of the information concerning the new name or residence or a  
9 change in the student, employment, or transient status, the registration agency shall forward the information to  
10 the department of justice, which shall forward a copy of the information and photograph to:

11 (a) in the event of a change in residence, the registration agency for the county to which the offender  
12 moves and, if the offender lives in a municipality, the registration agency for that municipality to which the offender  
13 moves;

14 (b) in the event of a change of name or of student, employment, or transient status, the registration  
15 agency of the appropriate county or municipality."

16  
17 **Section 15.** Section 46-23-506, MCA, is amended to read:

18 **"46-23-506. Duration of registration.** (1) A sexual offender required to register under this part shall  
19 register for the remainder of the offender's life, except as provided in subsection (3) or during a period of time  
20 during which the offender is in prison.

21 (2) A violent offender required to register under this part shall register:

22 (a) for the 10 years following release from confinement or, if not confined following sentencing, for the  
23 10 years following the conclusion of the sentencing hearing, but the offender is not relieved of the duty to register  
24 until a petition is granted under subsection (3)(a); or

25 (b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep  
26 registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register as  
27 provided in subsection (3)(b).

28 (3) (a) An offender required to register for 10 years under subsection (2)(a) may, after the 10 years have  
29 passed, petition the sentencing court or the district court for the judicial district in which the offender resides for  
30 an order relieving the offender of the duty to register. The petition must be served on the county attorney in the

1 county where the petition is filed. The petition must be granted if the defendant has not been convicted under  
2 subsection (2)(b).

3 (b) Except as provided in subsection (5), at any time after 10 years of registration for a level 1 sexual  
4 offender and at any time after 25 years of registration for a level 2 sexual offender, an offender ~~required to register~~  
5 ~~for life~~ may petition the sentencing court or the district court for the judicial district in which the offender resides  
6 for an order relieving the offender of the duty to register. The petition must be served on the county attorney in  
7 the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of  
8 the petition to the victim of the last offense for which the offender was convicted if the victim's address is  
9 reasonably available. The court shall consider any written or oral statements of the victim. The court may grant  
10 the petition upon finding that:

11 (i) the offender has remained a law-abiding citizen; and

12 (ii) continued registration is not necessary for public protection and that relief from registration is in the  
13 best interests of society.

14 (4) The offender may move that all or part of the proceedings in a hearing under subsection (3) be closed  
15 to the public, or the judge may close them on the judge's own motion. If a proceeding under subsection (3)(b) is  
16 closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that  
17 exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim  
18 is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the  
19 victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to  
20 privacy.

21 (5) Subsection (3) does not apply to an offender who was convicted of:

22 (a) a violation of 45-5-503 if:

23 (i) the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another; or

24 (ii) at the time the offense occurred, the victim was under 12 years of age;

25 (b) a violation of 45-5-507 if at the time the offense occurred the victim was under 12 years of age and  
26 the offender was 3 or more years older than the victim;

27 (c) a second or subsequent sexual offense that requires registration; or

28 (d) a sexual offense and was designated as a sexually violent predator under 46-23-509."  
29

30 **Section 16.** Section 46-23-508, MCA, is amended to read:

1       **"46-23-508. Dissemination of information.** (1) Information maintained under this part is confidential  
2 criminal justice information, as defined in 44-5-103, except that:

3       (a) the name and address of a registered sexual or violent offender are public criminal justice information,  
4 as defined in 44-5-103; and

5       (b) ~~a law enforcement~~ the department of justice or the registration agency shall release any offender  
6 registration information that it possesses relevant to the public if the department of justice or the registration  
7 agency determines that a registered offender is a risk to the safety of the community and that disclosure of the  
8 registration information that it possesses may protect the public and, at a minimum:

9       (i) if the offender is also a violent offender, the department of justice shall, and the registration agency  
10 may, disseminate to the victim and the public:

11       (A) the offender's name; and

12       (B) the offenses for which the offender is required to register under this part;

13       ~~(i)(ii)~~ if an offender was given a level 1 designation under 46-23-509, the agency with which the offender  
14 is registered shall notify the agency in whose jurisdiction the offense occurred of the registration; the department  
15 of justice shall, and the registration agency may, disseminate to the victim and the public:

16       (A) the offender's address;

17       (B) the name, photograph, and physical description of the offender;

18       (C) the offender's date of birth; and

19       (D) the offenses for which the offender is required to register under this part;

20       ~~(ii)(iii)~~ if an offender was given a level 1 designation and committed an offense against a minor or was  
21 given a level 2 designation under 46-23-509, the department of justice shall, and the registration agency with  
22 which the offender is registered may disseminate the offender's name to the public with the notation that the  
23 offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or  
24 group serving persons who have characteristics similar to those of a previous victim of the offender of may,  
25 disseminate to the victim and the public:

26       (A) the offender's address;

27       (B) the type of victim targeted by the offense;

28       (C) the name, photograph, and physical description of the offender;

29       (D) the offender's date of birth;

30       (E) the license plate number and a description of any vehicle owned or operated by the offender;

1       ~~(D)(F)~~ the offenses for which the offender is required to register under this part; and

2       ~~(E)(G)~~ any conditions imposed by the court upon the offender for the safety of the public; and

3       ~~(iii)(iv)~~ if an offender was given a level 3 designation under 46-23-509, the department of justice and the  
4 registration agency shall give the victim and the public notification that includes the information contained in  
5 subsection ~~(1)(b)(ii)~~ (1)(b)(iii). The ~~agency shall~~ notification must also include the date of the offender's release  
6 from confinement or, if not confined, the date the offender was sentenced, with a notation that the offender was  
7 not confined, and ~~shall~~ must include the community in which the offense occurred.

8       (c) prior to release of information under subsection (1)(b), a ~~law enforcement~~ registration agency may,  
9 in its sole discretion, request an in camera review by a district court of the determination by the ~~law enforcement~~  
10 registration agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and  
11 shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of  
12 the offender from confinement.

13       (2) The identity of a victim of an offense for which registration is required under this part may not be  
14 released by a ~~law enforcement~~ registration agency without the permission of the victim.

15       (3) ~~A state or local law enforcement agency may use the internet to disseminate the information allowed~~  
16 ~~by this section to the public.~~ Dissemination to the public of information allowed or required by this section may  
17 be done by newspaper, paper flyers, the internet, or any other media determined by the disseminating entity. In  
18 determining the method of dissemination, the disseminating entity should consider the level of risk posed by the  
19 offender to the public.

20       (4) The department of justice shall develop a model community notification policy to assist registration  
21 agencies in implementing the dissemination provisions of this section."

22  
23       **Section 17.** Section 46-23-509, MCA, is amended to read:

24       **"46-23-509. Sexual offender evaluations and designations – rulemaking authority.** (1) The  
25 department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and  
26 sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat  
27 offense and the threat that an offender poses to the public safety.

28       (2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender  
29 evaluator shall provide the court with a sexual offender evaluation report recommending one of the following  
30 levels of designation for the offender:

- 1 (a) level 1, the risk of a repeat sexual offense is low;  
2 (b) level 2, the risk of a repeat sexual offense is moderate;  
3 (c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual  
4 offender evaluator believes that the offender is a sexually violent predator.  
5 (3) Upon sentencing the offender, the court shall:  
6 (a) review the sexual offender evaluation report, any statement by a victim, and any statement by the  
7 offender;  
8 (b) designate the offender as level 1, 2, or 3; and  
9 (c) designate a level 3 offender as a sexually violent predator.  
10 (4) An offender designated as a level 2 offender or given a level designation by another state, the federal  
11 government, or the department under subsection (6) that is determined by the court to be similar to level 2 may  
12 petition the sentencing court or the district court for the judicial district in which the offender resides to change  
13 the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either  
14 the prison's sexual offender treatment program or of an equivalent program approved by the department. After  
15 considering the petition, the court may change the offender's risk level designation if the court finds by clear and  
16 convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time  
17 sentence was imposed. The court shall impose one of the three risk levels specified in this section.  
18 (5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual  
19 offender who is required to register under this part and who was sentenced prior to October 1, 1997, the  
20 department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement.  
21 (6) If an offense is covered by 46-23-502~~(6)(b)~~(9)(b), the offender registers under 46-23-504(1)(c), and  
22 the offender was given a risk level designation after conviction by another state or the federal government, the  
23 department of justice may give the offender the risk level designation assigned by the other state or the federal  
24 government.  
25 (7) The lack of a fixed residence is a factor that may be considered by the sentencing court or by the  
26 department in determining the risk level to be assigned to an offender pursuant to this section."  
27

28 **Section 18.** Section 46-23-1011, MCA, is amended to read:

29 **"46-23-1011. Supervision on probation.** (1) The department shall supervise probationers during their  
30 probation period, including supervision after release from imprisonment imposed pursuant to 45-5-503(4) or

1 45-5-625(4), in accord with the conditions set by a sentencing judge. If the sentencing judge did not set conditions  
2 of probation at the time of sentencing, the court shall, at the request of the department, hold a hearing and set  
3 conditions of probation. The probationer must be present at the hearing. The probationer has the right to counsel  
4 as provided in chapter 8 of this title.

5 (2) A copy of the conditions of probation must be signed by the probationer. The department may require  
6 a probationer to waive extradition for the probationer's return to Montana.

7 (3) The probation and parole officer shall regularly advise and consult with the probationer to encourage  
8 the probationer to improve the probationer's condition and conduct and shall inform the probationer of the  
9 restoration of rights on successful completion of the sentence.

10 (4) (a) The probation and parole officer may recommend and a judge may modify or add any condition  
11 of probation or suspension of sentence at any time.

12 (b) The probation and parole officer shall provide the county attorney in the sentencing jurisdiction with  
13 a report that identifies the conditions of probation and the reason why the officer believes that the judge should  
14 modify or add the conditions.

15 (c) The county attorney may file a petition requesting that the court modify or add conditions as  
16 requested by the probation and parole officer.

17 (d) The court may grant the petition if the probationer does not object. If the probationer objects to the  
18 petition, the court ~~must~~ shall hold a hearing pursuant to the provisions of 46-18-203.

19 (e) ~~The~~ Except as they apply to supervision after release from imprisonment imposed pursuant to  
20 45-5-503(4) or 45-5-625(4), the provisions of 46-18-203(7)(a)(ii) do not apply to this section.

21 (f) The probationer shall sign a copy of new or modified conditions of probation. The court may waive  
22 or modify a condition of restitution only as provided in 46-18-246.

23 (5) (a) Upon recommendation of the probation and parole officer, a judge may conditionally discharge  
24 a probationer from supervision before expiration of the probationer's sentence if:

25 (i) the judge determines that a conditional discharge from supervision:

26 (A) is in the best interests of the probationer and society; and

27 (B) will not present unreasonable risk of danger to the victim of the offense; and

28 (ii) the offender has paid all restitution and court-ordered financial obligations in full.

29 (b) Subsection (5)(a) does not prohibit a judge from revoking the order suspending execution or deferring  
30 imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from

1 supervision.

2 (c) If the department certifies to the sentencing judge that the workload of a district probation and parole  
3 office has exceeded the optimum workload for the district over the preceding 60 days, the judge may not place  
4 an offender on probation under supervision by that district office unless the judge grants a conditional discharge  
5 to a probationer being supervised by that district office. The department may recommend probationers to the  
6 judge for conditional discharge. The judge may accept or reject the recommendations of the department. The  
7 department shall determine the optimum workload for each district probation and parole office."

8

9 **Section 19.** Section 53-1-203, MCA, is amended to read:

10 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

11 (a) adopt rules necessary to carry out the purposes of 41-5-123 through 41-5-125, rules necessary for  
12 the siting, establishment, and expansion of prerelease centers, rules for the establishment and maintenance of  
13 residential methamphetamine treatment programs, rules for the establishment and maintenance of a residential  
14 sexual offender treatment program, and rules for the admission, custody, transfer, and release of persons in  
15 department programs except as otherwise provided by law. However, rules adopted by the department may not  
16 amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting,  
17 establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions,  
18 covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may  
19 not be sited at any location without community support. The prerelease siting, establishment, and expansion must  
20 be subject to, and the rules must include, a reasonable mechanism for a determination of community support or  
21 objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting,  
22 establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

23 (b) subject to the functions of the department of administration, lease or purchase lands for use by  
24 correctional facilities and classify those lands to determine those that may be most profitably used for agricultural  
25 purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown  
26 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the  
27 persons confined in correctional facilities;

28 (c) contract with private, nonprofit Montana corporations to establish and maintain:

29 (i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole  
30 eligibility or discharge for release into the community, providing an alternative placement for offenders who have

1 violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The  
2 centers shall provide a less restrictive environment than the prison while maintaining adequate security. The  
3 centers must be operated in coordination with other department correctional programs. This subsection does not  
4 affect the department's authority to operate and maintain prerelease centers.

5 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as  
6 provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for  
7 persons convicted of possession of methamphetamine. The department shall issue a request for proposals using  
8 a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

9 (iii) a residential sexual offender treatment program.

10 (d) use the staff and services of other state agencies and units of the Montana university system, within  
11 their respective statutory functions, to carry out its functions under this title;

12 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including  
13 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed  
14 in correctional facilities or programs;

15 (f) encourage the establishment of programs at the local and state level for the rehabilitation and  
16 education of felony offenders;

17 (g) administer all state and federal funds allocated to the department for youth in need of intervention  
18 and delinquent youth, as defined in 41-5-103;

19 (h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

20 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed  
21 of the specific information, by category, related to youth in need of intervention and delinquent youth in  
22 out-of-home care facilities;

23 (j) provide funding for and place youth who are adjudicated to be delinquent or in need of intervention  
24 and who are committed to the department;

25 (k) administer youth correctional facilities;

26 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and

27 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

28 (i) provide for delinquent youth committed to the department; and

29 (ii) coordinate and apply the principles of modern correctional administration to the facilities and programs  
30 administered by the department.

(2) The department and a private, nonprofit Montana corporation may not enter into a contract under subsection (1)(c) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c). Prior to entering into a contract for a period of 10 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the contract.

(3) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth correctional facilities.

(4) The department may contract with Montana corporations to operate a day reporting program as an alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015. The department shall adopt by rule the requirements for a day reporting program, including but not limited to requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance with any conditions of probation, such as drug testing."

**NEW SECTION. Section 20. Sexual offender treatment.** (1) Upon sentencing a person convicted of a sexual offense, as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender pursuant to 46-23-509.

(2) The court shall order an offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301 through 45-5-303, and sentenced to imprisonment in a state prison to:

(a) enroll in and successfully complete the educational phase of the prison's sexual offender treatment program; and

(b) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509 or is a sexually violent predator as defined in 46-23-502, enroll in and successfully complete the cognitive and behavioral phase of the prison's sexual offender treatment program.

(3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's sexual offender treatment program is not eligible for parole unless that phase of the program has been successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.

(4) (a) Except for an offender sentenced pursuant to 45-5-503(4) or 45-5-625(4), during an offender's term of commitment to the department of corrections or a state prison, the department may place the person in a residential sexual offender treatment program approved by the department under 53-1-203.

(b) If the person successfully completes a residential sexual offender treatment program approved by the department of corrections, the remainder of the term must be served on probation unless the department petitions the sentencing court to amend the original sentencing judgment.

(5) If a person's sentence is suspended pursuant to subsection (4)(b), during the suspended portion of the sentence the person:

(a) shall abide by the standard conditions of probation established by the department of corrections;

(b) shall pay the costs of imprisonment, probation, and any sexual offender treatment if the person is financially able to pay those costs;

(c) may have no contact with the victim or the victim's immediate family unless approved by the victim or the victim's parent or guardian, the person's therapists, and the person's probation officer;

(d) shall comply with all requirements and conditions of sexual offender treatment as directed by the person's sex offender therapist;

(e) may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(f) may not consume alcoholic beverages;

(g) shall enter and remain in an aftercare program as directed by the person's probation officer;

(h) shall submit to random or routine drug and alcohol testing;

(i) may not possess pornographic material or access pornography through the internet; and

(j) at the discretion of the probation and parole officer, may be subject to electronic monitoring or continuous satellite monitoring.

(6) The sentencing of a sexual offender is subject to 46-18-219.

(7) The sentencing court may, upon petition by the department of corrections, modify a sentence of a sexual offender to impose any part of a sentence that was previously suspended.

**NEW SECTION. Section 21. Codification instruction.** [Section 20] is intended to be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to [section 20].

1        **NEW SECTION.** **Section 22. Severability.** If a part of [this act] is invalid, all valid parts that are  
2 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
3 the part remains in effect in all valid applications that are severable from the invalid applications.  
4

5        **NEW SECTION.** **Section 23. Effective date.** [This act] is effective on passage and approval.  
6

7        **NEW SECTION.** **Section 24. Retroactive applicability.** [Sections 2, 3, and 12 through 17] apply  
8 retroactively, within the meaning of 1-2-109, to:

9            (1) sexual offenders who are sentenced or who are in the custody or under the supervision of the  
10 department of corrections on or after July 1, 1989; and

11           (2) violent offenders who are sentenced or who are in the custody or under the supervision of the  
12 department of corrections on or after October 1, 1995.  
13

- END -